

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION

CONE FINANCIAL GROUP, INC.,

Plaintiff,

v.

EMPLOYERS INSURANCE
COMPANY OF WAUSAU,

Civil No. 7:09-cv-00118-HL

Defendant.

**DEFENDANT'S ANSWER AND AFFIRMATIVE DEFENSES
TO COUNT III OF PLAINTIFF'S SECOND AMENDED COMPLAINT**

Defendant, Employers Insurance Company of Wausau, files its answer and affirmative defenses to Count III of Plaintiff's Second Amended Complaint¹ as follows:

Answer

1. Admitted.
2. Admitted that Wausau does business with Liberty Mutual Business Market as Liberty Mutual Middle Market, whose insurance products and services are provided exclusively through independent agents in the State of Georgia. Admitted that Wausau's principal place of business is in Boston, Massachusetts. Admitted that Wausau is authorized to do business in the State of Georgia as a foreign corporation.
3. Admitted.
4. Admitted that Wausau issued workers' compensation and employers' liability policy number WAC-Z9D-424724-011 to Cone. The terms and conditions of the policy speak for themselves.

¹ Only Count III is answered pursuant to the Court's 4 November 2010 Order. DE 64.

5. The terms and conditions of the policy speak for themselves.

6. Denied.

7. Denied.

8. Denied.

9. Denied.

10. Denied.

11. Denied.

12. Denied.

13. Denied.

14. Denied.

15. Denied.

16. Denied.

17. Denied.

18. Denied.

19. Denied.

20. Denied.

21. Denied.

22. Denied.

23. Denied.

34. No answer necessary.

35. Denied.

36. Denied.

37. Denied.

38. Denied.

39. Denied.

Affirmative Defenses

1. Cone has failed to satisfy conditions precedent to bringing an action against Wausau.
2. Count III fails to state a claim upon which relief may be granted since the document on which Cone's claim is predicated lacks consideration.
3. Count III fails to state a claim upon which relief may be granted since the document on which Cone's claim is predicated is not a contract.
4. Cone's claim is barred under the doctrines of waiver; estoppel; laches, and unclean hands.
5. The statute of limitation bars Cone's claim.
6. The voluntary payment doctrine bars Cone's claim.

WHEREFORE, Defendant, Employers Insurance Company of Wausau, requests that Count III of Plaintiff's, Cone Financial Group, Inc., d/b/a Workforce Personnel Services, Second Amended Complaint be dismissed and Defendant, Employers Insurance Company of Wausau, awarded its attorneys' fees and expenses of litigation pursuant to OCGA §13-6-11, and other relief deemed appropriate.

Respectfully Submitted,

**EMPLOYERS INSURANCE
COMPANY OF WAUSAU**

By Counsel

By: G. Mason White

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(admitted *pro hac vice*)

CERTIFICATE OF SERVICE

I certify that on 9 November 2010 I electronically filed the foregoing with the Clerk of the Court by using CM/ECF. I also certify that the foregoing is being served this day on the following attorney, via transmission of Notice of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive Notices of Electronic Filing:

Jefferson M. Allen, Esquire, Cohen Cooper Estep & Allen, LLC, 3330 Cumberland Boulevard, Suite 600, Atlanta, Georgia 30339.

G. Mason White